

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§335.9, 335.10, 335.15, 335.112, 335.115, 335.117, 335.152, 335.155, 335.159 and repeal of §§335.114 and 335.154, concerning Industrial Solid Waste and Municipal Hazardous Waste.

#### EXPLANATION OF PROPOSED RULES

The general purpose of this rulemaking is to make state rules no more stringent than federal rules in accordance with commission policy.

The proposed reporting amendments are part of an ongoing regulatory reform effort to reduce unnecessary reporting requirements for hazardous waste management facilities. The proposed rule amendments will reduce the reporting frequency for interim status and permitted RCRA hazardous waste storage, processing, and disposal facilities from state required annual reporting to federally required biennial reporting. The commission has determined that this information is not necessary on an annual basis and that the federal biennial reporting frequency is satisfactory for state information requirements.

The Environmental Protection Agency (EPA) has also promulgated in 62 FedReg 6622-6657, February 12, 1997, an exemption from manifesting for transport of hazardous waste over right-of-ways on contiguous properties (properties touching along a boundary) in Title 40 Code of Federal Regulations (CFR) §262.20(f). Under 40 CFR §271.21(e), states, such as the State of Texas, having final Resource Conservation and Recovery Act (RCRA) authorization must modify their program to reflect federal program changes and submit the modifications to the EPA for approval. Establishing equivalency with

federal regulations will enable the commission to retain authorization to operate aspects of the hazardous waste program. Incorporating the federal manifesting exemption into state rules will also make state rules no more stringent than the federal rules in accordance with commission policy. In addition, removing barriers to consolidation of waste in one central area should reduce the possibility that the public and the environment could come into contact with hazardous waste because one area is easier to control and can be better located than numerous smaller areas.

A typographical error is also corrected.

Section 335.9 is proposed to be amended by deleting the cross references to §§335.114 and 335.154, relating to annual reporting requirements for interim status and permitted hazardous waste management facilities that are proposed for repeal.

Section 335.10 is proposed to be amended by adding a new subsection (h). This new subsection will exempt hazardous waste shipments from manifesting if they are transported along a public right-of-way joining contiguous land controlled by the same person, as in federal rule 40 CFR §262.20(f).

Section 335.15 is proposed to be amended by adding a new subsection (7). This new subsection will clarify that information submitted as part of the monthly waste receipt summary reports need not be resubmitted as part of the required biennial reports for interim status and permitted hazardous waste storage, processing, and disposal facilities. This will eliminate the need to submit the same information to the commission twice.

Section 335.112 is proposed to be amended to delete the part of subsection (a)(4) which expressly excludes 40 CFR 265.75, the federal biennial reporting requirement. Deletion of this exemption will result in incorporation of the federally required biennial reporting requirement (which is included in Subchapter E, already adopted in §335.112(a)(4)) by reference to replace the state annual reporting requirements proposed for repeal.

Section 335.114 is proposed to be repealed. This will eliminate the annual reporting requirement for interim status facilities. This information will then be reported biennially per 40 CFR §265.75, which would now be incorporated by reference, due to the deletion of the exemption of 40 CFR §265.75 in §335.112(a)(4).

Section 335.152 is proposed to be amended to delete the part of subsection (a)(4) which expressly excludes 40 CFR 264.75, the federal biennial reporting requirement. Deletion of this exemption will result in incorporation of the federally required biennial reporting requirement (which is included in Subchapter E, already adopted in §335.152(a)(4)) by reference to replace the annual reporting requirement proposed for repeal.

Section 335.154 is proposed to be repealed. This will eliminate the annual reporting requirement for permitted facilities. This information will then be reported biennially per 40 CFR §264.75, which would now be incorporated by reference, due to the deletion of the exemption of 40 CFR §264.75 in §335.152(a)(4).

A revision to 335.159 is included to correct a typographical error. In the first sentence, the word “or” is corrected to “of.” This simple correction does not revise the intent of the requirement.

Sections 335.115, 335.117, and 335.155 are proposed to be amended to delete cross references to repealed sections.

#### SMALL BUSINESS ANALYSIS

The commission has reviewed the adopted rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there is no adverse economic effect on small businesses because the rulemaking reduces certain reporting and manifesting requirements for businesses, large and small.

#### FISCAL NOTE

Mr. Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five-year period the rules, as proposed, are in effect, there will be no significant fiscal implications for state or local government.

#### PUBLIC BENEFIT

Mr. Horvath has also determined that for the first five years the rules as proposed are in effect the public benefit anticipated will be less reporting requirements for hazardous waste storage, processing, and disposal facilities; less manifesting requirements for hazardous waste generators, transporters, and storage, processing, and disposal facilities; greater rule clarity; and improved consistency with federal rules on reporting and manifesting requirements. The proposed rules will result in no increase in costs

to the affected parties because certain rule manifesting and reporting requirements have been reduced.

Anticipated cost savings to persons, and businesses, large and small, are not quantifiable at this time.

#### DRAFT REGULATORY IMPACT ANALYSIS

The rule proposal would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the rule conforms certain state rules to match the federal hazardous waste regulations, which in turn provides benefits to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state, as explained below. The benefit from conforming certain state rules to match the federal hazardous waste regulations is derived from proposing to provide for (1) an exemption from manifesting requirements for transport of hazardous waste over rights-of-way on contiguous properties, and (2) a reduction in certain reporting requirements for hazardous waste storage, processing, and disposal facilities. The incorporation of the manifesting exemption and the reduction in reporting requirements would provide a benefit to the economy, sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements, thus costing certain companies less. The rule also would provide a benefit, as opposed to an adverse effect in a material way, to the environment and the public health and safety of the state and affected sectors of the state, by providing for enhanced consistency between federal and state waste regulatory requirements, which leads to improvements in the management of hazardous waste and hazardous waste facilities. Another way of explaining this benefit is that the federal regulations to which the state rules are being conformed are protective of the environment and public health and safety. In the case of the

manifesting exemption, for example, the environment and public health and safety would be benefitted because there would be a reduced possibility that the environment or public would come into contact with hazardous waste, since, by removing barriers to consolidation of wastes in one central area, the waste would not be as “spread out” over numerous smaller areas. Thus, the waste could more readily be consolidated in one central area that is easier to control and can be more suitably located than numerous smaller areas. In addition, this proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to reduce state hazardous waste reporting requirements that are more stringent than federal rules, to incorporate a federal manifesting exemption into the state rules, and to correct a wording error. The rules will substantially advance this specific purpose by amendments to 30 TAC Chapter 335, §§335.9, 335.10, 335.15, 335.112, 335.115, 335.117, 335.152, 335.155, 335.159 and repeal of §§335.114 and 335.154, concerning Industrial Solid Waste and Municipal Hazardous Waste.

Promulgation and enforcement of these rules will not burden private real property because they reduce state regulatory requirements. Real property is not the subject of these rules, and therefore, the rule changes do not affect real property.

## COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking and found that the proposal is a rulemaking subject to the Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this proposed rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this proposed rule would be consistent with the applicable CMP goals and policies because the rule amendments would conform certain of the commission's rules to the federal hazardous waste regulations, thereby serving to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also thereby serving to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. In addition, the proposed rule does not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rule.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Bettie Bell, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by March 8, 1999, and should reference Rule Log No. 98024-335-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Wayne Harry at (512) 239-6619.

#### STATUTORY AUTHORITY

This rule amendment is proposed under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule amendment is also proposed under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

The proposed amendment implements Texas Health and Safety Code Chapter 361.

**SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND  
MUNICIPAL HAZARDOUS WASTE IN GENERAL**

**§§335.9, 335.10, 335.15**

**§335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators.**

(a) (No change.)

(b) A generator who ships his hazardous waste off-site must also report the information specified in §335.71 of this title (relating to Biennial Reporting). [Any generator who stores, processes, or disposes of hazardous waste on-site shall also submit an annual report in accordance with the requirements of §335.114 of this title (relating to Reporting Requirements), or as provided in §335.154 of this title (relating to Reporting Requirements for Owners and Operators).]

**§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.**

(a) Except as provided in subsection (g) and (h) of this section, no generator of hazardous or Class 1 waste consigned to an off-site solid waste process, storage, or disposal facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:

(1)-(6) (No change.)

(b)-(g) (No change.)

(h) No manifest and no marking in accordance with §335.67(b) of this title (related to Marking) is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this chapter (relating to Hazardous Waste Discharges).

**§335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities.**

This section applies to owners and operators who receive hazardous or Class 1 waste from off-site sources or who have notified that they intend to receive hazardous or Class 1 waste from off-site sources.

(1)-(6) (No change.)

(7) Information which has already been submitted by permitted or interim status facilities pursuant to the requirements of this subsection need not be included in the reports required by 40 CFR §264.75(d) and (e) or §265.75(d) and (e) (relating to Biennial Reports).

**SUBCHAPTER E: INTERIM STANDARDS FOR OWNERS AND OPERATORS OF  
HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES**

**§§335.112, 335.115, 335.117**

**STATUTORY AUTHORITY**

This rule amendment is proposed under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule is also proposed under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

The proposed amendment implements Texas Health and Safety Code Chapter 361.

**§335.112. Standards.**

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990, at 55 FedReg 22685 and as further amended as indicated in each paragraph of this section:

(1)-(3) (No change.)

(4) Subpart E -- Manifest System, Recordkeeping and Reporting (as amended through January 29, 1992, at 57 FedReg 3492), except 40 CFR §§265.71, 265.72, [265.75,] 265.76, and 265.77;

(5)-(22) (No change.)

(b)-(c) (No change.)

**§335.115. Additional Reports.**

In addition to submitting the [annual report and ]waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities)[ and §335.114 of this title (relating to Reporting Requirements)], the owner or operator must also report to the executive director:

(1)-(4) (No change.)

**§335.117. Recordkeeping and Reporting.**

(a) Unless the groundwater is monitored to satisfy the requirements of 40 Code of Federal Regulations §265.93(d)(4), the owner or operator must:

(1) (No change.)

(2) Report the following groundwater monitoring information to the executive director:

(A) (No change.)

(B) Quarterly, during the initial year of groundwater monitoring, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265.92(b)(2) and (3) for each groundwater monitoring well. Annually thereafter, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265.92(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under 40 Code of Federal Regulations §265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with 40 Code of Federal Regulations §265.93(c)(1). [During the active life of the facility, this information must be submitted as part of the annual report required under §335.114 of this title (relating to Reporting Requirements).] In addition,

concentration of the groundwater quality parameters listed in 40 Code of Federal Regulations §265.92(b)(2) shall be reported annually.

(C) As a part of the annual report, [required under §335.114 of this title (relating to Reporting Requirements): ]results of the evaluation of groundwater surface elevations under 40 Code of Federal Regulations §265.93(f), and a description of the response to that evaluation where applicable.

(b) If the groundwater is monitored to satisfy the requirements of 40 Code of Federal Regulations §265.93(d)(4), the owner or operator must:

(1) (No change.)

(2) Annually, until final closure of the facility, submit to the executive director a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period. [This report must be submitted as part of the annual report required under §335.114 of this title (relating to Reporting Requirements).]

(c)-(d) (No change.)

**SUBCHAPTER E: INTERIM STANDARDS FOR OWNERS AND OPERATORS OF  
HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES**

**§335.114**

**STATUTORY AUTHORITY**

This rule repeal is proposed under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule repeal is also proposed under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

The proposed repeal implements Texas Health and Safety Code Chapter 361.

**§335.114. Reporting Requirements.**

**SUBCHAPTER F: PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF  
HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES**

**§§335.152, 335.155, 335.159**

**STATUTORY AUTHORITY**

This rule amendment is proposed under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule amendment is also proposed under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

The proposed amendment implements Texas Health and Safety Code Chapter 361.

**§335.152. Standards.**

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990, at 55 FedReg 22685 and as further amended and adopted as indicated in each paragraph of this section:

(1)-(3) (No change.)

(4) Subpart E--Manifest System, Recordkeeping, and Reporting (as amended through January 29, 1992, at 57 FedReg 3462), except 40 CFR §§264.71, 264.72, [274.75, ]264.76 and 264.77; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5)-(20)

(b)-(d) (No change.)

**§335.155. Additional Reports.**

In addition to submitting the [annual report and ]waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities)[ and §335.154 of this title (relating to Reporting

Requirements for Owners and Operators)], the owner or operator must also report to the executive director:

(1)-(3) (No change.)

**§335.159. Hazardous Constituents.**

(a) The commission will specify in the compliance plan the hazardous constituents to which the groundwater protection standard of[or] §335.158 of this title (relating to Groundwater Protection Standard) applies. Hazardous constituents are constituents identified in Appendix VIII of 40 Code of Federal Regulations Part 261 that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the commission has excluded them under subsection (b) of this section.

(b)-(c) (No change.)

**SUBCHAPTER F: PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF  
HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES**

**§335.154**

**STATUTORY AUTHORITY**

This rule repeal is proposed under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule repeal is also proposed under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

The proposed repeal implements Texas Health and Safety Code Chapter 361.

**§335.154. Reporting Requirements for Owners and Operators.**